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 SONY COMPUTER ENTERTAINMENT AMERICA LLC

UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

SONY COMPUTER ENTERTAINMENT  
 AMERICA LLC, a Delaware limited liability  
 company,

Plaintiff,

v.

ZOOMBA LDC;  
WWW.SHOPPSJAILBREAK.COM; VLAD  
 GAZOUNE, individually and doing business as  
 ZOOMBA LDC and  
WWW.SHOPPSJAILBREAK.COM; THAHN  
 NGUYGEN, individually and doing business as  
 USATECHCITY, LTD; ARTHUR BATES II,  
 individually and doing business as PSP PIT  
 STOP; TOM NOOKER, individually and doing  
 business as  
WWW.BUYPS3JAILBREAK.WEBS.COM; ALEX  
 ESQUIVEL, individually and doing business as  
 NDSGAMER; BIN LE ZHONG aka BEN LEE,  
 individually and doing business as  
WWW.PS3BREAKONLINE.COM; and FAI KING  
 FONG, individually and doing business as  
WWW.PS3BREAKONLINE.COM; and  
 HUANRAN LEE, individually and doing business  
 as WWW.GETPS3BREAK.COM; and DOES 9  
 through 100,

Defendants.

Case No. C-10-03909 VRW

**STIPULATED PRELIMINARY  
 INJUNCTION AS TO DEFENDANT TOM  
 NOOKER, INDIVIDUALLY AND ON  
 BEHALF OF  
WWW.BUYPS3JAILBREAK.WEBS.COM;  
~~PROPOSED~~ ORDER**

Date: October 12, 2010  
 Time: 10:00 a.m.  
 Dept.: Courtroom 6, 17th Floor  
 Judge: Hon. Vaughn R. Walker

On August 31, 2010, plaintiff Sony Computer Entertainment America LLC ("SCEA") filed a Complaint against defendants Zoomba LDC, [www.shoppsjailbreak.com](http://www.shoppsjailbreak.com), and Does 1 through 100. On October 1, 2010, SCEA filed its First Amended Complaint, adding Vlad Gazoune, individually and doing business as Zoomba LDC and [www.shoppsjailbreak.com](http://www.shoppsjailbreak.com); Thanh Nguyen, individually and doing business as USATechCity, Ltd.; Arthur Bates II, individually and doing business as PSP Pit Stop; Tom Nooker, individually and doing business as [www.buyps3jailbreak.webs.com](http://www.buyps3jailbreak.webs.com); Alex Esquivel, individually and doing business as NDSGamer; Bin Le Zhong aka Ben Lee, individually and doing business as [www.ps3breakonline.com](http://www.ps3breakonline.com); Fai King Fong, individually and doing business as [www.ps3breakonline.com](http://www.ps3breakonline.com); and HuanRan Lee, individually and doing business as [www.getps3break.com](http://www.getps3break.com) as Defendants.

SCEA alleges that Defendants are trafficking in circumvention devices known as "PS3 Jailbreak Devices," and identified by many names, including but not limited to, "PS Jailbreak," "PS3 Break," "PS3 Modchip," "PS3 Free Revolution Adapter," "PS3 Key," "PS3 Yes!," "PS3break.com," "P3Free," and the "UsbBreak " (collectively, "PS3 JAILBREAK DEVICES"). SCEA further alleges that certain Defendants are trafficking in "Backup Manager" software, also known as, for example, SDK 1.92 ("BACKUP MANAGER"). The foregoing devices and software, as well as the software known as, for example, "PSGroove", "PSFreedom," and "OpenPSJailbreak" (collectively, "PS3 JAILBREAK SOFTWARE"), bypass technological protection measures embedded within the PlayStation®3 computer entertainment system developed by plaintiff SCEA in violation of federal copyright laws, including the Digital Millennium Copyright Act. SCEA has also alleged that Defendants violated federal trademark and unfair competition laws.

SCEA and Defendant Tom Nooker, individually and doing business as [www.buyps3jailbreak.webs.com](http://www.buyps3jailbreak.webs.com) (hereinafter "Defendant") have agreed to a preliminary injunction governing this dispute upon the following stipulated facts. Each party has waived the right to appeal regarding this preliminary injunction. Each party will bear its own fees and costs in connection with this preliminary injunction. Should judicial enforcement of any of the

terms of this preliminary injunction become necessary in the future, the prevailing party will be entitled to its attorneys' fees and costs. The parties agree that violation of this preliminary injunction by Defendant would cause irreparable harm to SCEA, and if such a violation occurs, SCEA will be entitled to immediate relief from this Court, including but not limited to appropriate monetary relief. Defendant consents to the jurisdiction of this Court to enforce the terms of this injunction, including but not limited to contempt proceedings.

**I. STIPULATED FACTS AND CONCLUSIONS**

1. This Court has subject matter jurisdiction over this lawsuit and personal jurisdiction over each of the parties for the purposes of this action. Venue is proper in this Court.

2. SCEA markets and sells home entertainment products, including the PlayStation 3 computer entertainment system, a video game entertainment system featuring hardware and firmware designed for the playing of video games (collectively, "the PS3 System").

3. The PS3 System utilizes technological protection measures ("TPMs") that effectively control access to copyrighted works protected under the Copyright Act, 17 U.S.C. § 101, *et seq.*, protect the rights of the copyright owners of those works, and prevent unlicensed or copied software from playing on the PS3 System. These TPMs ensure that video games cannot be copied either to the PS3 System's hard drive or to an external drive and are therefore essential to protect the rights of SCEA with respect to its copyrighted works and/or to prevent video game piracy.

4. SCEA develops and publishes its own video game software for the PS3 System and also licenses third party licensees to develop interactive entertainment software products for the PS3 System. With respect to the video game software developed and published by SCEA itself, SCEA owns the valuable copyrights to the audiovisual images, stories, characters and other protectable features of the copyrighted works. Among other copyright registrations, SCEA has registered copyrights nos. PA 1-616-055 (*Ratchet & Clank Future: Tools of Destruction*), PA 1-619-506 (*Resistance 2*), and PA 1-611-286 (*Uncharted Drake's*

1 Fortune). SCEA's copyrighted works are referred to collectively as the "SUBJECT WORKS."

2 5. SCEA, under agreements with Sony Computer Entertainment Inc., holds the  
3 exclusive license in the United States for the following trademarks, among others:  
4 Registration No. 2259732 [stylized "PlayStation" word mark]; 2087964 [stylized "PlayStation"  
5 word mark]; Registration No. 2859185 ["PS" stylized word mark]; Registration No. 2863923  
6 ["PS3" stylized word mark]; Registration No. 3147147 ["PSP" word mark]; Registration No.  
7 3025454 ["PSP" stylized word mark] and Registration No. 2984420 ["PS.com" word mark].  
8 The PS3, PS and PS.com marks displayed on the PS3 JAILBREAK DEVICES are virtually  
9 identical to SCEA's registered marks.

10 6. Defendant has promoted, marketed, distributed, imported, sold, offered to the  
11 public, provided or trafficked in technology, products, services and devices – including,  
12 without limitation, the PS3 JAILBREAK DEVICES and the BACKUP MANAGER – that  
13 circumvent the PS3 System's TPMs in violation of the Digital Millennium Copyright Act, 17  
14 U.S.C. § 1201, *et seq.*, and contribute to copyright infringement of the SUBJECT WORKS  
15 under 17 U.S.C. § 101 *et seq.* Defendant conducts at least some of his business activities  
16 from a website located at [www.buyps3jailbreak.webs.com](http://www.buyps3jailbreak.webs.com).

17 7. The PS3 JAILBREAK DEVICE and the BACKUP MANAGER allow users to  
18 create unauthorized and illegal copies of PlayStation 3 video games and store those copies  
19 on the PS3 System's internal hard drive or on an external hard drive. The primary function of  
20 the PS3 JAILBREAK DEVICE and the BACKUP MANAGER is to circumvent the TPMs  
21 SCEA has implemented to protect copyrighted works, including its SUBJECT WORKS.

22 8. The PS3 JAILBREAK DEVICES and the BACKUP MANAGER, which  
23 Defendant has promoted, marketed, distributed, imported, sold, offered to the public,  
24 provided or trafficked in, are designed or produced primarily to bypass the TPMs in the PS3  
25 System.

26 ///

27 ///

28 ///

1 **II. ORDER**

2 **ACCORDINGLY, IT IS HEREBY ORDERED** by consent of the parties that Defendant  
 3 Tom Nooker, individually and doing business as www.buyps3jailbreak.webs.com, whether as  
 4 an individual or as a principal, officer, director or employee of any business entity, and his  
 5 agents, attorneys, servants, employees, distributors, suppliers, representatives and all other  
 6 persons or entities in privity or acting in concert or participation with Defendant who receive  
 7 notice of this Preliminary Injunction, shall be and hereby are preliminarily enjoined and  
 8 restrained from:

9 1. selling, offering for sale, marketing, advertising, promoting, installing,  
 10 importing, exporting, offering to the public, distributing, providing, or otherwise  
 11 trafficking in, any technology, product, service, device, component or part that  
 12 circumvents any TPM in any generation of PlayStation hardware or software, including  
 13 but not limited to, any and all of the PS3 JAILBREAK DEVICES, any copies or  
 14 versions of the BACKUP MANAGER, any copies or versions of the PS3 JAILBREAK  
 15 SOFTWARE, or any other hardware or software which bypasses the TPMs in the PS3  
 16 System;

17 2. selling, offering for sale, marketing, advertising, promoting, installing,  
 18 importing, exporting, offering to the public, distributing, providing, or otherwise  
 19 trafficking in, unauthorized or illegal copies of any generation of PlayStation video  
 20 games, including but not limited to, PS3 System video games;

21 3. providing links from any website to any other website selling, offering for  
 22 sale, marketing, advertising, promoting, installing, importing, exporting, offering to the  
 23 public, distributing, providing, or otherwise trafficking in any technology, product,  
 24 service, device, component or part that circumvents any TPM in any generation of  
 25 PlayStation hardware or software, including but not limited to, any and all of the PS3  
 26 JAILBREAK DEVICES, any copies or versions of the BACKUP MANAGER, any  
 27 copies or versions of the PS3 JAILBREAK SOFTWARE, or any other hardware or  
 28 software which bypasses the TPMs in the PS3 System;

1                   4.       Assisting, facilitating or encouraging others to engage in the conduct set  
2       forth above in 1-3 in violation of the Stipulated Injunction.

3  
4                   **IT IS FURTHER ORDERED** that neither Defendant, nor his officers, employees,  
5 attorneys or representatives, nor any and all other persons acting in concert or participation  
6 with Defendant, with notice of this Order, shall destroy, erase, delete, dispose of, or alter any  
7 documents or records, in whatever format, including electronic documents, computer files,  
8 computer discs and drives, that relate to, reflect, record, or contain any information regarding  
9 the manufacture, distribution, promotion, marketing, advertising, purchase, sale, offer to sell,  
10 trafficking, import, export, installation, payment, storage, and/or shipment of any and all of the  
11 PS3 JAILBREAK DEVICES, copies or any versions of the BACKUP MANAGER, or copies or  
12 any versions of the PS3 JAILBREAK SOFTWARE, or any other hardware or software which  
13 bypasses the TPMs in the PS3 System, or any communications with any party concerning  
14 the manufacture, distribution, promotion, marketing, advertising, purchase, sale, offer to sell,  
15 trafficking, import, export, installation payment, storage, and/or shipment of any and all of the  
16 PS3 JAILBREAK DEVICES, copies or any versions of the BACKUP MANAGER, copies or  
17 any versions of the PS3 JAILBREAK SOFTWARE, or any other hardware or software which  
18 bypasses the TPMs in the PS3 System.

19                   **IT IS FURTHER ORDERED** that, upon execution of this Preliminary Injunction,  
20 Defendant shall preserve intact and then immediately deliver to SCEA's attorneys any and all  
21 circumvention devices in Defendant's possession, custody or control, including, but not  
22 limited to any and all of the PS3 JAILBREAK DEVICES, copies or any versions of the  
23 BACKUP MANAGER, or copies or any versions of the PS3 JAILBREAK SOFTWARE, or any  
24 other hardware or software which bypasses the TPMs in the PS3 System. Such goods shall  
25 be delivered to SCEA's attorneys at Townsend and Townsend and Crew LLP, Two  
26 Embarcadero Center, Eighth Floor, San Francisco, California, 94111, Attn: Timothy R. Cahn,  
27 Esq.




1 IT IS FURTHER ORDERED that this Preliminary Injunction shall remain in effect until  
2 entry of Judgment or until this Court orders otherwise.

3  
4 The undersigned hereby stipulate to the above facts and conclusions and consent to  
5 the entry of this Preliminary Injunction, which may be signed in counterparts. Signatures can  
6 be obtained and exchanged by facsimile.

7  
8 IT IS SO STIPULATED.

9  
10 DATED: 10/07/2010

TOWNSEND AND TOWNSEND AND CREW LLP

11  
12 By:   
13 JAMES G. GILLILAND, JR.  
14 TIMOTHY R. CAHN  
15 HOLLY GAUDREAU  
16 RYAN BRICKER

Attorneys for Plaintiff  
Sony Computer Entertainment America LLC

17  
18 DATED: 10/06/2010

By: Tom Nooker

19  
20 DEFENDANT TOM NOOKER, INDIVIDUALLY AND  
21 DOING BUSINESS AS  
22 [www.buyps3jailbreak.webs.com](http://www.buyps3jailbreak.webs.com)

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 DATED: 10/12/2010

25   
26 HON. VAUGHN R. WALKER  
27 UNITED STATES DISTRICT JUDGE  
28

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**PROOF OF SERVICE**

I, Shelley Lott, declare:

I am employed in the City and County of San Francisco, California; I am over the age of 18 years and not a party to the within action; my business address is Two Embarcadero Center, Eighth Floor, San Francisco, California 94111. On the date set forth below, I served a true and accurate copy of the document(s) entitled: **STIPULATED PRELIMINARY INJUNCTION AS TO DEFENDANT TOM NOOKER, INDIVIDUALLY AND ON BEHALF OF WWW.BUYPS3JAILBREAK.WEBS.COM; [PROPOSED] ORDER** on the party(ies) in this action by placing said copy(ies) in a sealed envelope each addressed as follows:

Thanh Nguyen  
USA Tech City  
7861 13th St., Unit D  
Westminster, California 92683  
Email: contact@usatechcity.com

Arthur Bates, II  
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Bremerton, Washington 98311  
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Alex Esquivel  
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530 Buckingham Rd., Apt. #521  
Richardson, Texas 75081  
Email: alexesquivel2004@yahoo.com

Tom Nooker  
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***Via Email only***

Vlad Gazoune  
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***Via Email only***

HuanRan Lee  
www.getps3break.com  
Email: sales@getps3break.com and  
179608325@qq.com

☐ [By First Class Mail] I am readily familiar with my employer's practice for collecting and processing documents for mailing with the United States Postal Service. On the date listed herein, following ordinary business practice, I served the within document(s)



1 at my place of business, by placing a true copy thereof, enclosed in a sealed envelope, with  
2 postage thereon fully prepaid, for collection and mailing with the United States Postal Service  
where it would be deposited with the United States Postal Service that same day in the  
ordinary course of business.

3 ☒ [By Overnight Courier] I caused each envelope to be delivered by a  
4 commercial carrier service for overnight delivery to the offices of the addressee(s).

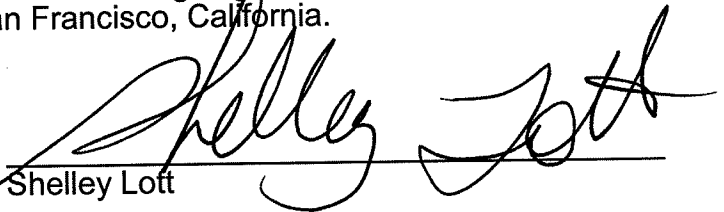
5 ☐ [By Hand] I directed each envelope to the party(ies) so designated on the  
6 service list to be delivered by courier this date.

7 ☐ [By Facsimile Transmission] I caused said document to be sent by facsimile  
transmission to the fax number indicated for the party(ies) listed above.

8 ☒ [By Electronic Transmission] I caused said document to be sent by electronic  
transmission to the e-mail address(es) indicated for the party(ies) listed above.

9 I declare under penalty of perjury that the foregoing is true and correct and that this  
10 declaration was executed this date at San Francisco, California.

11  
12 Dated: October 7, 2010

13   
Shelley Lott